No. 9400

United States Circuit Court of Appeals

For the Ninth Circuit

GARDEN CITY CANNING COMPANY,
Appellant,

vs.

WILLIAM ADDY, J. B. BOWEN, J. T. HEIDOTTING, R. J. SUTTON and JOHN SAUNDERS,
Appellees.

BRIEF FOR APPELLEES

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BRIEF FOR APPELLEES

This is an appeal taken from an order denying appellant's application for a final decree of discharge under the provisions of former Section 77B of the Bankruptcy Act. The court below denied the application because of appellant's admitted failure to pay to appellees the amounts which the plan of reorganization proposed by the appellant and confirmed by the court in express terms provided should be paid to appellees on account of their respective claims. Those claims not only had been season-

ably filed with the court but they were listed in the schedules filed by appellant and acknowledged in the plan of reorganization itself.

The District Court's opinion is reported in 29 F. Supp. 13 and at page 147 of the record herein.

STATEMENT OF FACTS.

The facts are undisputed. Appellant is a corporation formerly engaged in the business of canning fruits and vegetables at San Jose, California. Appellees are farmers residing in Yuba County, California, to whom appellant was and is indebted for peaches sold and delivered. On February 6, 1936, appellant filed a petition for corporate reorganization under the provisions of Section 77B of the Bankruptcy Act, and on four occasions in those proceedings formally acknowledged that it was indebted to appellees. The petition for reorganization was approved by an order made the same day (R. pp. 1 and 2). As required by that order, appellant on March 3, 1936, filed a verified schedule of its creditors. That schedule included the names and addresses of appellees (R. pp. 2, 8, 9 and 10). Thereafter and on March 12, 1936, the *judge* made an order (R. pp. 13-23) permitting the debtor to remain in permanent possession of its estate and referring all issues and matters arising in the proceeding to one of the referees in bankruptcy as special master for hearing and report. That order also provided that all claims of creditors should be filed on or before June 15, 1936, (R. p. 18) and that a copy of the

order itself, or a summary thereof to be approved by the special master should be mailed to all creditors and stockholders and published in a newspaper (R. p. 22). *Neither that order nor any other order of the judge specified the place where proofs of claims of creditors should be filed.* This is conceded by appellant on page 11 of its opening brief. Debtor's counsel prepared a *purported* summary of the judge's order, had it approved by the special master (R. p. 32), and subsequently published and mailed it as required by the order. This summary *incorrectly* represented the judge's order of March 12, 1936 as requiring the claims of creditors "to be filed at the office of the special master, 1095 Market Street, San Francisco, California" (R. p. 104). *The judge's order contained no such requirement.*

On April 10, 1936, appellant filed its verified schedules of assets and liabilities by which appellant acknowledged itself to be indebted to appellees as follows:

W. M. Addy	$934.58
J. B. Bowen	633.29
J. J. Heidotting	308.91
R. J. Sutton	435.77
John Saunders	364.40

(R. pp. 29 and 30)

On May 1, 1936, appellant proposed a plan of reorganization (R. pp. 34 to 42, incl.). This plan reads in part as follows (R. pp. 36-38):

"General Unsecured Claims.

The general unsecured claims against the debtor are fifty-six in number. Of these claims, fourteen are

for less than $10.00. These fourteen claims, totaling $45.81, are as follows:

[List omitted as immaterial]

"The remaining unsecured claims against the debtor are as follows:

* * *	* * *
W. M. Addy	$934.58
* * *	* * *
J. B. Bowen	633.29
J. J. Heidotting	308.91
* * *	* * *
R. J. Sutton	435.77
John Saunders	364.40

"Debtor proposes to cause to be paid *to all of said general unsecured claimants,* 50 per cent of the amount of their claims in the following manner, to-wit:

(a) To all claimants whose claims are less than $10.00, 50 per cent of the amount of their claim in cash upon the entry of the order approving this plan of reorganization

(b) To all claimants whose claims are in excess of $10.00, 20 per cent of the amount of their claim in cash upon the entry of the order approving this plan of reorganization, 10 per cent of the amount of their claims four months after the entry of the said order, ten per cent of the amount of their claims eight months after the entry of the said order, and ten per cent of the amount of their claims one year after the entry of the said order."

As this court knows, plans of reorganization in 77B proceedings generally provide for payment to creditors by

class designation, without naming the creditors or the amounts of their claims. It is to be noted, by way of sharp contrast, that the plan in this case named the creditors, including appellees, *and unequivocally provided for the payment to appellees of 50% of the amounts stated to be due them respectively.* The unconditional character of this provision is not affected by Article VII of the plan (R. p. 42) quoted at page 5 of appellant's opening brief, which relates only to the time when the plan is to become effective.

A copy of this plan was sent to each of the appellees accompanying the purported summary of the order of March 12 (R. p. 4). Appellees were thus informed that the plan expressly provided for payment to them of 50% of their claims.

Appellees on June 4, 1936 *(ten days before the expiration of the time limit fixed by the judge)* filed their verified claims in proper form *in the office of the clerk of the court below* (R. pp. 4, 49 to 60, 89). The amounts of the claims so filed are identical with the amounts shown to be due appellees by the debtor's schedules and the plan of reorganization, except that appellee John Saunders claimed $1577.70 to be due him whereas appellant conceded only $364.40 to be due him.

On November 4, 1936, appellant filed with the special master a petition for confirmation of the plan above mentioned (R. p. 66). While the petition alleged, contrary to the fact, that the judge had ordered that proofs of claims be filed with the special master and purported to set forth in an exhibit "a list of all proofs of claims which have

been filed herein within the time within which claims could be filed", which list did not include the claims of appellees,—nevertheless the plan which the petition prayed be confirmed was the identical plan originally proposed by appellant. A copy of it was attached to the petition as part of it (R. 4). That plan in express terms provided that there should be paid by appellant to appellees, designated therein by name, 50% of the amounts stated to be due them. The special master set a time for the hearing of the petition, and the appellant gave notice thereof in the form set forth on page 106 of the Record. Although a copy of the plan itself had been sent, *in haec verba,* to each appellee, a copy of the petition for confirmation was not sent to any of them, but only the notice. There was nothing in the notice in any way indicating that appellant would contend that appellees' claims had not been properly filed, that appellees would be excluded from participation in the distribution provided for by the plan, or that the petition sought anything but confirmation of the plan exactly as originally proposed; and such in fact was all that the petition prayed for (R. p. 69).

A day or two after the notice was given, namely, on November 12, 1936, Mr. Loyd Hewitt, one of the attorneys for appellees, wrote the special master stating that he represented appellees and that he would not be able to be present at the hearing on the petition for confirmation of the plan, and requesting that the special master advise him of the amount of debts against appellant, the creditors who had voted in favor of the plan and the amounts of their respective claims (R. pp. 89-90). No response was made to this communication. The special master subse-

quently made a report recommending to the judge that the plan be confirmed (R. p. 67). Thereafter, on December 15, 1936, the judge made an order approving the special master's report and confirming the plan (R. p. 74). The plan so confirmed by the court was the same as that originally proposed by appellant and unconditionally provided for the payment to appellees of 50% of their claims.

On January 12, 1938, appellant filed its petition for a final decree adjudging that the plan had been completely executed and discharging the debtor (R. pp. 76-78). On January 22, 1938, appellees filed a petition objecting to the entry of a final decree on the ground that they had not been paid the amounts to which they were entitled under the plan (R. p. 79). The debtor filed an answer setting up as a defense the assertion that appellees' claims had been improperly filed with the clerk. The matter was referred to the special master for hearing and report. The special master filed a report recommending that the objections be overruled (R. p. 79 et seq.). The District Judge disapproved and rejected the report, and denied appellant's petition for a final decree without prejudice to its being renewed if and when appellant shall have satisfied the claims of appellees (R. p. 152). The appeal is taken from that order.

DISCUSSION.

I. THE ISSUE: WAS APPELLANT ENTITLED TO A DISCHARGE THOUGH IT PAID FIVE ADMITTED CREDITORS NOTHING?

The entry of a final decree under the provisions of Section 77B has the effect of discharging the debtor from its

debts and liabilities. As said by the United States Supreme Court in *Meyer v. Kenmore Granville Hotel Company,* 297 U. S. 160, 165,

> "The release of a debtor in a reorganization proceeding is contingent upon the performance of its part of the reorganization plan."

Admittedly appellant has not paid appellees 50%, or any, of their claims as required by the plan.

Appellant contends, however, (a) that appellees lost their rights by not having filed their claims with the special master, (b) that in any case, appellees are concluded by the decree confirming the plan, and (c) by laches. There is no merit in any of these contentions.

II. APPELLEES' CLAIMS WERE PROPERLY FILED WITH THE CLERK.

In determining whether appellees' claims were properly filed, every presumption must be indulged in favor of the regularity of the filing thereof. It is only if there is no other alternative that they can be held not to have been properly filed. The general attitude of the courts is expressed in *In re Brill,* 52 Fed.(2d) 636, thus:

> "If there be discretion to treat the claim as seasonably presented, it should be exercised favorably to the creditor. *The sole question is whether the court has power to do so.*"

In the present case appellees' claims were properly filed in the office of the clerk of the court for two independent reasons. First, the judge's order did not require filing with the special master. Second, the claims were

properly filed with the clerk irrespective of the judge's order of March 12, 1936.

A. The judge's order did not require filing with the special master.

Under Section 77B the power to fix the time, place and manner of filing or evidencing claims was vested not in the court, but exclusively in the *judge*. Subdivision (c) of that section provided:

> "Upon approving the petition or answer or at any time thereafter *the judge* * * * (6) shall determine a reasonable time within which the claims and interests of creditors and stockholders may be filed or evidenced and * * * the manner in which such claims and interests may be filed or evidenced and allowed * * *"

Section 1, subdivision (16) of the Bankruptcy Act defines the term "judge" as meaning "a judge of a court of bankruptcy not including the referee." (Title 11, U. S. C., Sec. 1, Subd. 16, in effect in 1936)

In the present case the only order made by the judge relating to the filing of claims was the order made on March 12, 1936. While that order prescribed the time for filing claims, neither that order nor any other order made by the judge prescribed the place where claims of creditors should be filed or the manner of filing or evidencing claims.

Since the order merely provided for the filing of claims without designating where, it meant filing with the *court,* that is, with the clerk. Even if the court could have superseded General Order XX, it did not do so.

Appellant, however, contends that, since the purported summary of the order which counsel for appellant prepared and caused the special master to approve stated that the claims should be filed with the special master, appellees' claims were improperly filed. *But the judge's order and not the summary controls,* and for at least three reasons:

(1) The judge's order authorized the master to approve a summary of the order, but not to change or modify it or to add to the provisions thereof. Appellant argues that since the master was to pass on objections to claims, the claims had to be before him. But that fact does not mean that claims had to be filed with him. He could easily obtain them from the clerk's office, just as does a referee in ordinary bankruptcy proceedings.

(2) By the express terms of the statute the judge and the judge alone had power to determine the manner in which claims should be filed or evidenced. Even though the judge had wished to empower the special master to prescribe the place where the claims should be filed, he could not do so. A special master under Section 77B has no power to make orders, in this respect differing from an ordinary Referee in Bankruptcy. By the terms of Section 77B, matters or issues could be referred to a special master, not for hearing and determination, but for hearing and report only. The special master's functions were limited to hearing and reporting; he could not make an order. No action of the special master had any binding effect until approved by the judge. Thus, in *In re A. B. Company,* 15 F. Supp. 152, the court said:

> "Section 77B(c)(11) of the Bankruptcy Act provides that the judge 'may refer any matters to a special master who may be one of the referees in bankruptcy, for consideration and report, either generally or upon specific issues'. According to the plain provision of the Act, referees acting as special masters cannot enter orders. Their purpose is solely to take evidence, consider the questions of law involved, and make their reports and recommendation to the court."

See, also:

Gerdes, Corporate Reorganization, Sec. 959.

(3) Moreover, even if the master had the power to make an order fixing the place of filing, he made no such order. He merely purported to summarize the court's order, and his summary was erroneous.

The special master's order approving the alleged summary of the judge's order of March 12, 1936, was a nullity insofar as it purported to require the filing of claims with the special master.

B. The claims were properly filed with the clerk irrespective of the judge's order of March 12, 1936.

At the time appellees filed their claims with the clerk, General Order In Bankruptcy XX provided:

> "Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed with either the referee or the clerk."

Under this General Order appellees were clearly entitled to file their claims with the clerk. Appellant contends that Order XX was inapplicable to proceedings under Section 77B because a special master in 77B proceedings is not a referee. This narrow contention cannot be sustained. Sending a matter to a special master is a reference; Section 77B(c)(11) states that the judge may "refer" to a special master.

Moreover, on May 13, 1935, the United States Supreme Court (295 U. S. 772) adopted General Order in Bankruptcy LII providing that "The following *additional* rules shall apply to proceedings under Section 77B of the Bankruptcy Act," specifying a series of additional rules, and thus indicating that the existing rules also applied to such proceedings. On June 1, 1936 (before appellees filed their claims) the Supreme Court amended the General Orders (see 298 U. S. 695) by expressly providing that Orders XVII, XVIII, XXI, XXVIII, XXIX and XLII should not be applicable to proceedings under Section 77B. No such exclusion was made of Order XX. Clearly, these amendments recognized the applicability of all General Orders not so amended to proceedings under Section 77B, or made them applicable.

In its opinion the District Court recognized that in the circumstances it was natural for appellees to assume that the proper place to file their claims was with the clerk. Even had the filing with the clerk been incorrect technically, the court had the power to consider the claims properly filed. Cf. *In re Derby,* 18 F. Supp. 995.

It is clear, we submit, that appellees' claims were properly filed. And therefore they could not be ignored or treated differently from other claims of the same class.

III. APPELLEES' CLAIMS WERE NOT BARRED BY THE ORDER CONFIRMING THE PLAN. ON THE CONTRARY, THE PLAN REQUIRED THE PAYMENT OF THESE CLAIMS.

Appellant contends that the decree confirming the plan operated as an adjudication that claims of creditors should have been filed with the special master and that no creditor whose claim was not so filed should be allowed to participate in the plan. The contention is unsound.

There is nothing in the plan, the petition for confirmation, the notice of the hearing thereof, the master's report thereon, or the order confirming the plan, which can be construed as in any way indicating that only creditors whose claims were filed with the special master should be allowed to participate. When the appellant filed its petition for confirmation of the plan, the only issue before the court was whether the plan complied with the statute and had been accepted by the requisite number of creditors. Where the claims should have been filed and what creditors had filed claims were wholly irrelevant questions. The only question to be determined was whether the plan should be confirmed. The court decreed that it should be confirmed and ordered the appellant to carry it into effect. *The plan so confirmed expressly provided that there should be paid to appellees fifty per cent of the amounts stated to be due them.* As the district court's opinion states "The plan of reorganization makes no provision for

payment upon presentation and acceptance of claims, but contains an unqualified offer to pay 50 per cent of the amount of the claims listed."

Appellant says (brief, p. 15) that it is not the plan as proposed but the plan as confirmed that governs. But here the plan confirmed was the plan proposed; there were no changes. Contrary to assertions of appellant (*e.g.* brief, pp. 11, 15), the plan as confirmed did not restrict payment to those creditors who had filed claims with the master; it did not order distribution to be made only to 35 creditors supposedly specified in the master's report.

Instead of being an adjudication that appellees should be denied participation, the decree confirming the plan is therefore an express and unconditional adjudication that appellees should be paid 50 per cent of their claims.

It may also be noted, contrary to a contention made on page 14 of Appellant's Opening Brief, that there is nothing in Section 77B making it mandatory on the court to restrict participation in a plan of reorganization to creditors who have filed claims. Under Section 77B(c)(6) a court can with propriety direct that distribution in accordance with a plan shall be made to creditors whose claims are shown on the debtor's schedules or on its books and records, or as shown in the plan itself. Thus *Gerdes* in his work on *Corporate Reorganization* says:

> "It is to be noted that there is no requirement that the judge must direct the claims to be filed. Section 77B provides that the judge shall determine a reasonable time within which claims and interests 'may be filed or evidenced'. It is therefore suggested that it may be provided by local rule or judge's order that

> proof of claims may be dispensed with and that all claims and interests shall be evidenced by the books and records as of a certain date. Opportunity should be granted to file claims however where the claimants challenge the accuracy of the Debtor's records."
>
> *II Gerdes,* Sec. 723, p. 1188.

It may further be noted that even had the court on December 15, 1936, confirmed a plan different from that proposed—which it did not do—the appellees could not have been bound thereby. It is elementary that, with respect to parties not appearing, proceedings cannot go beyond the scope of the notice which they have received. The only notice received by appellees was that appellant had petitioned for confirmation of the identical plan which it had originally proposed. That plan provided that consents to it should be filed with the master, but it did not provide that claims should be filed with him. Since the proper number of consents were received, appellees had no objection. By failing to oppose the petition for confirmation, they did not acquiesce in any modification of the plan proposed.

Although the debtor had sent to each creditor a copy of the plan, it did not send to any of them a copy of the petition for confirmation; it only sent to the creditors a notice (R. p. 106) which recited:

> "Please take notice that the debtor above named has filed herein a petition *for confirmation of the plan of reorganization heretofore filed herein,* which said plan has been accepted by creditors holding more than two-thirds in amount of all of the claims filed herein, and that Honorable Burton J. Wyman, Referee in Bankruptcy, as Special Master of the

> above entitled court, to whom these proceedings have been referred, has called a meeting of creditors of said debtor to be held at his office, Room 609 Grant Building, 1095 Market Street, San Francisco, California, on the 16th day of November, 1936, at the hour of 2 o'clock P. M. of said day, at which time evidence will be introduced by the debtor in support of said petition for confirmation of plan of reorganization, and at which time you may appear if you see fit and produce any evidence or argument in opposition to the confirmation of said plan."

Thus the notice of the petition for confirmation suggests no change in the plan. It referred to the petition for further particulars, but, if the petition had been consulted, the prayer would have been seen to be as follows (R. 64):

> "Wherefore, your petitioner prays that a meeting of creditors be called and held herein to consider said plan; that the form of notice to creditors attached hereto and marked Exhibit 'C' be approved by the court; that at said meeting of creditors said plan of reorganization be examined and that an order be made confirming said plan, and for such further and other order as may be just and proper in the premises."

Thus there was no prayer in the petition that only such creditors be paid whose claims had been filed with the special master.

The master's recommendation was that "the proposed order * * * wherein the approval of the *proposed* plan of reorganization is sought to be decreed, should be made the order of this court" (R. pp. 72, 73); and the court's order (R. p. 74) provides:

"It is Further Ordered that the plan of reorganization proposed by the debtor and accepted by creditors holding claims exceeding two-thirds in amount of all claims filed in these proceedings be and the same is hereby approved.

"It is Further Ordered that the debtor proceed forthwith to execute and carry into effect the said plan of reorganization as so approved and confirmed * * * by delivering to all its general unsecured creditors the cash consideration and the promissory notes provided for in said plan of reorganization, and to otherwise perform and carry out and cause to be performed and carried out all of the acts and transactions on its part required to be performed and carried out pursuant to said plan or reorganization."

The appellant says (brief, p. 10) that the master's report recommending confirmation of the plan contained a recital to the effect that the creditors had been directed to file their claims with the master, and it further says that on December 15, 1936 the court's order of confirmation adopted the referee's findings; it is therefore claimed (brief, p. 13) that the district court approved the master's exercise of power to direct that claims be filed in his office. The contention must fail for several reasons. First, the alleged finding was no part of the court's order. The appellees could not have appealed from the order of confirmation by which they were not aggrieved merely because it was prefaced by an erroneous recital. Second, the alleged finding was not an issue in the confirmation proceedings. The only issue before the court at the time was confirmation *vel non*. Third, the master had never purported to exercise power to direct that claims be filed in his office,

but had only mistakenly summarized the court's order of March 12, 1936. And, fourth, the court had no jurisdiction in December, 1936, to make a retroactive order changing the place for filing claims after the time for filing had elapsed and thereby to destroy creditor's rights already vested.

Appellant's contention that appellees' claims were barred by the decree confirming the plan is untenable. The appellees do not attack the plan. There is no reason, therefore, why they should have appealed from the order confirming it. They stand on the plan. By not paying the five appellees, the appellant has not complied with the plan, has not consummated it, and is not entitled to a decree adjudging that it has complied.

IV. APPELLEES ARE NOT ESTOPPED FROM OBJECTING TO APPELLANT'S APPLICATION FOR A FINAL DECREE.

Appellant devotes a large portion of its brief to the assertion that appellees should be held barred by laches from objecting to appellant's application for a final decree.

The shoe is on the other foot. The responsibility for what occurred, the laches, is to be attributed to the appellant, for three reasons: (1) misreading Judge Louderback's order of March 12, 1936 as requiring filing claims with the master and preparing a wrong summary; (2) acting upon the basis of the wrong summary instead of the court order; and (3) failing to examine the clerk's files to ascertain what claims had there been filed. There is no laches on the part of appellees; they filed their claims as required by the court's order. It was not laches to refrain from appearing at the hearing on the petition for confir-

mation on November 16, 1936, since the petition itself provided payment to these appellees. The appellant quotes (brief, p. 23) the master's conclusion that there was laches because the only way in which the appellees can be paid is to

> "(1) compel the debtor, which heretofore has acted strictly in accordance with the orders of this court, itself directly to raise the money with which to make said payments, or (2) compel said debtor to proceed against those creditors of the same class as the negligent creditors to repay into debtor's estate, sufficient money to take care of these unpaid pro rata payments in each instance."

Of course, the debtor had not acted in accordance with the orders of the court. Beyond that, the argument is beside the point. The only question now before the court is whether the appellant should be granted a discharge from its indebtedness to appellees. The appellant is entitled to such a discharge only if it has complied with its part of the plan of reorganization. That it has not done so is evident from the facts shown by the record. The court below has not yet been called upon to determine, and did not determine, whether appellees can compel appellant to satisfy its claims. It has not been asked to determine and has not determined whether other creditors of the appellant should be required to return the whole or any part of the allowance which they have received to the end that the appellees might be paid. That question can only be determined in subsequent proceedings below on the basis of all the facts of the case developed after due notice to all parties concerned.

But one point is indisputable: appellant is not entitled to a discharge and an adjudication that it has carried out the plan of reorganization.

The debtor's contention that it may be unable to obtain funds to pay the five farmer appellees for the fruit it purchased from them is no ground for granting a discharge because: (a) the debtor is seeking to take advantage of a pure windfall (lack of filing with the special master) to destroy just claims *of which debtor was fully aware at all times; (b) by filing the Petition for Reorganization listing these appellees as parties to whom 50 per cent would be paid, the debtor represented to the court that it would be financially able to pay them if the plan was confirmed.*

The names and addresses of appellees were set forth in the list of creditors filed by appellant. Their claims were set forth in the schedules of assets and liabilities, and they were set forth again in the plan of reorganization. Appellant has never been misled by any conduct of appellees. Rather, if appellant is granted a discharge, appellees will have been misled by appellant. By the very terms of the plan of reorganization appellant unconditionally undertook to pay to appellees 50 per cent of their respective claims. In view of that unconditional undertaking appellees would have been justified in refraining from filing any claims at all, except in Saunders' case where the claim was greater than indicated in the plan. If appellant suffered any prejudice by overlooking the claims filed with the clerk, that prejudice resulted not from any conduct or inaction of appellees but from the error of appellant in ignoring its own plan and also in assuming that the

special master could both abrogate General Order XX and modify the Judge's order with respect to the place of filing.

It is suggested in appellant's brief that the appellees were guilty of delay in not acting to apprise the debtor of their right to share for 13 months after the plan was confirmed. The contention is based on the erroneous notion that the objections to the petition for a final decree are objections to the plan of reorganization, whereas the appellees stand on the order of confirmation, and their objections to the petition for a final decree were based upon the fact that the appellant had not complied with that plan. The objections were filed by the appellee at the earliest possible moment. The debtor did not file its report claiming complete execution of the plan and praying for a discharge until January 12, 1938. (R. 76) The court by order of the same day, provided for the giving of "notice to the creditors of this report and request for discharge". Promptly on January 22, 1938, the objections were filed, not to the plan but to the claim of the debtor that it had completely executed the plan.

As a further claim of estoppel, appellant argues (brief, p. 20) that the claim filed by appellee Saunders exceeded the amount conceded to be due him by the appellant, and that since the latter had no knowledge that Saunder's claim had been filed with the clerk, it was unable to file objections to the allowance of the claim in the increased amount. It suffices to say in reply that the district court's order denying a final decree took cognizance of the situation and provided (R. 152) that the debtor might have a

period of ten days after the order in which to file written objections to the allowance of the Saunder's claim, thus giving the debtor the opportunity to contest the amount.

CONCLUSION

Of miscellaneous contentions by appellant, nothing need be said. For example, it is argued (brief, p. 25) that the special master's report was based upon oral evidence taken before him and that no evidence was introduced before the district judge. The question involved in the case is one of law and not of fact. There is no dispute as to the material facts.

The court's order was just and equitable. By means of 77B proceedings the debtor has cut its obligations in half and should not be permitted to eliminate *in toto* certain known farmer creditors. The district court properly refused to stamp with approval the debtor's failure to pay.

The order of the district court is proper and it should be affirmed.

Respectfully submitted,

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Dated: March 28, 1940.